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Future work of the Forum, including emerging issues

Implementation of the human rights mandate of the Permanent Forum on Indigenous Issues**

Summary

The present report is submitted in accordance with paragraph 163 of the report of the Permanent Forum on Indigenous Issues on its fifth session. It contains an overview of United Nations efforts in the field of human rights in cooperation with indigenous peoples and outlines the work of the Permanent Forum and possible future work in this area, within its mandate.

* E/C.19/2007/1.

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I. Introduction

1. The Permanent Forum serves as an advisory body to the Economic and Social Council with a mandate to discuss indigenous issues within the areas of expertise of the Council relating to economic and social development, culture, the environment, education, health and human rights. In so doing the Forum shall:

(a) Provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council;

(b) Raise awareness and promote the integration and coordination of activities relating to indigenous issues within the United Nations system;

(c) Prepare and disseminate information on indigenous issues.

2. As human rights is clearly one of its mandated areas, it is incumbent on the Forum to fulfil its role of providing advice, raising awareness and disseminating information on the human rights of indigenous peoples.

3. The Forum's mandate compels it to address the human rights issues of indigenous peoples in a holistic manner. This should not be conceptually difficult as its mandated areas can logically be translated into political, economic, social and cultural rights. The Forum as a new body is creatively developing the implementation of its mandate on human rights in a more comprehensive manner. It is mindful of the fact that there are existing organs and bodies of the United Nations which have the primary mandates to deal with this issue.

4. It is still a sad reality that indigenous peoples suffer egregious violations of their basic human rights and fundamental freedoms and justice for many of them remains illusive at the national, regional and global levels. Even where there are laws and policies on indigenous peoples' rights, there is a big gap between policy and implementation. The compliance of many Governments with their international human rights obligations remains at a low level. Existing complaint mechanisms and special procedures in the United Nations are still not popularly known and therefore are very much underutilized by indigenous peoples.

5. Indigenous peoples' representatives, in cooperation with supportive Governments, worked for more than 20 years to formulate and conclude a United Nations Declaration on the Rights of Indigenous Peoples. The deferral of the adoption of this instrument by the General Assembly at its session in 2006 is a testimony to the fact that indigenous peoples' inherent and collective human rights are still the least understood and most difficult issues for some Governments to deal with. This is a serious challenge for the whole United Nations system. The Permanent Forum, being the highest body in the United Nations dealing with indigenous peoples' issues, must rise up to this challenge.

6. The establishment of the Human Rights Council and its adoption of the United Nations Declaration on the Rights of Indigenous Peoples as one of its first actions, the establishment and adoption of the Programme of Action of the Second International Decade of the World's Indigenous People, the ongoing United Nations reform, the deferral of the adoption of the Declaration by the General Assembly and the uncertain fate of the Working Group on Indigenous Populations all provide challenges and opportunities for the Forum.

7. The Forum at its fifth session decided "to appoint special rapporteurs to prepare reports and recommendations on how it can implement its human rights mandate without duplicating the work of other human rights bodies and mechanisms and on how it can coordinate and complete its work on human rights and to report to the Permanent Forum at its next session". The present report is submitted in accordance with that decision.

8. The first part of the present report is an overview of the engagement of indigenous peoples with the United Nations system and how the United Nations has addressed indigenous peoples' human rights; the second part reviews and analyses how the Forum has implemented its mandate on human rights to date; and the last part deals with the challenges and prospects for the Forum towards enhancing the implementation of its human rights mandate.

II. Engagement of indigenous peoples with the United Nations system

9. The first time that indigenous peoples went to Geneva to raise their issues before the League of Nations was in 1923. It was a delegation of the Six Nations of the Iroquois led by Cayuga Chief Deskaheh. He was not received by the League and he died without accomplishing his mission of reporting the violations of their rights. A similar trip was organized by a Maori religious leader, W. T. Ratana, in 1925 to protest the breaking of the Treaty of Waitangi by the Government of New Zealand. Like Chief Deskaheh, he was denied access to the League of Nations.

10. The first United Nations agency that did a study on the situation of indigenous peoples, particularly indigenous workers, is the International Labour Organization. It was done in the 1950s and revealed the dire situation of exploitation and forced labour among the miners, most of whom were indigenous peoples, in a number of Latin American countries. That led to the adoption in 1957 of ILO Convention No. 107 (Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries). The Convention was heavily criticized by indigenous peoples for its assimilationist approach. To rectify that weakness, ILO adopted in 1989 Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. It has now been ratified by 19 countries. Some indigenous peoples in the ratifying countries successfully used it and its complaint procedure to make their issues more visible and to bring about changes in their constitutions and laws.

11. In the 1960s and 1970s the indigenous peoples' movements in the Americas and the Caribbean, the Arctic, Australia, New Zealand, the Philippines and Bangladesh started gaining strength. Linkages between those movements led to the formation of a transnational indigenous peoples' movement. Their common issues range from genocide, militarization, structural discrimination and exclusion, displacement from their ancestral territories and expropriation of their lands and resources without their consent, development aggression, extrajudicial killings, illegal arrests, torture, violence against women, to outright banning of the use of their languages, wearing of their traditional dress and practising of their own culture and religions amounting to ethnocide. In 1977 the "International NGO Conference on Discrimination against Indigenous Populations in the Americas" was held in Geneva and adopted the "Declaration of Principles for the Defense of Indigenous

Nations and Peoples of the Western Hemisphere", asserting that indigenous peoples are subjects of international law.

12. During the same period, the United Nations started developing major international human rights instruments, in addition to the Universal Declaration of Human Rights. The 1966 International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination were adopted although their entry into force took from 4 to 10 years. Treaty bodies[1] for those Conventions were established to monitor their implementation. Other human rights instruments are the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1989 Convention on the Rights of the Child and the 1984 Convention against Torture and Other Degrading Treatment or Punishment, the 1996 International Convention on the Rights of Migrant Workers and Members of Their Families and the 2006 Convention on the Rights of Persons with Disabilities.[2] Some indigenous persons and organizations have raised complaints and submitted shadow reports to the treaty bodies. The jurisprudence of those treaty bodies are now part of international human rights law.[3] They are vital contributions to the emergence of a body of law which confirms and protects the individual and collective rights of indigenous peoples.

13. Owing to the increasing pressure on the United Nations to address the basic human rights issues of indigenous peoples, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed a Special Rapporteur in 1972 to prepare a "Study on the problem of discrimination against indigenous populations". The final report came out in 1982, known as the Martinez-Cobo report.[4] That study, along with the strong advocacy of the indigenous peoples' movement, led to the establishment of the Working Group on Indigenous Populations, whose mandate is to "review developments regarding the human rights of indigenous populations and to develop international standards".

14. The Working Group first met in 1982 and except for 1984, it met annually until 2006. It completed its work on a draft Declaration on the Rights of Indigenous Peoples in 1993 and submitted it to the Sub-Commission, which adopted it and recommended it to the Commission on Human Rights. That same year was also declared the International Year of the World's Indigenous People and the World Conference on Human Rights took place, with the representatives of indigenous peoples participating in large numbers. Among the achievements was the adoption

[1] The treaty bodies are the Human Rights Committee, which monitors the implementation of the Covenant on Civil and Political Rights and the Committee on Economic, Social and Cultural Rights, which monitors the Covenant on Economic, Social and Cultural Rights, and the Committee on the Elimination of All Forms of Racial Discrimination, which monitors the relevant Convention.

[2] The Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities specifically mention indigenous children and indigenous persons with disabilities, respectively.

[3] The jurisprudence of these treaty bodies comes from their concluding observations, general comments or decisions in response to the complaints raised to them. Fergus MacKay, a legal official of the Forest Peoples' Program has made several compilations of these. They can be downloaded from the website: www.forestpeoples.org.

[4] The document is available at the website of the secretariat of the Forum, www.un.org/esa/socdev/unpfii.

of recommendations calling on the General Assembly to proclaim the International Decade of the World's Indigenous People (1995-2004), to adopt the United Nations Declaration on the Rights of Indigenous Peoples and to establish a permanent forum on indigenous peoples in the United Nations.

15. In 1995, the Commission on Human Rights established its own Working Group to elaborate the draft Declaration recommended to the Commission by its Sub-Commission (resolution 1995/32), the Working Group on the Draft Declaration. The final draft was adopted by the Human Rights Council on 29 June 2006 and was sent to the General Assembly for adoption. The Assembly then deferred the adoption until September 2007 when its sixty-first session ends.

16. Indigenous representatives also took part in the regular sessions of the Commission on Human Rights, and also took part in the United Nations Conference on Environment and Development and other world conferences of the 1990s, including the World Conference on Human Rights (Vienna, 1993), Fourth World Conference on Women (Beijing, 1995), the International Conference on Population and Development (Cairo, 1994) and the World Summit for Social Development (Copenhagen, 1995). They participate in the Conference of States parties and working groups of the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change, the Working Group on Traditional Knowledge, Folklore and Traditional Cultural Expressions of the World Intellectual Property Organization (WIPO), the Commission on Sustainable Development and the Commission on the Status of Women.

17. To facilitate the participation of representatives of indigenous peoples in the various processes and to give them seed funds for specific projects, voluntary funds were established by the United Nations, which include the Voluntary Fund for Indigenous Populations (1984), Voluntary Fund for the International Decade of the World's Indigenous People (1995), Voluntary Fund for the Permanent Forum (2002), Voluntary Fund for Indigenous Peoples of the WIPO (2006), Voluntary Fund for Indigenous Peoples of the Convention on Biological Diversity (2006), and the Voluntary Fund for the Second Decade of the World's Indigenous People (2005).

18. The United Nations Permanent Forum on Indigenous Issues was established by the Economic and Social Council in its resolution 2000/22, which included human rights as one of its mandated areas. Since its first session in 2002, the number of representatives of indigenous peoples, Governments, non-governmental organizations, United Nations bodies, programmes and funds, academia and other multilateral organizations taking part in its annual sessions has increased to some 1,500 annually.

19. In 2001, the Commission on Human Rights by its resolution 2001/57 established a thematic procedure, the Special Rapporteur on the human rights and fundamental freedoms of indigenous people, whose mandate is:

(a) To gather, request, receive and exchange information from all relevant sources, including Governments and indigenous people and their communities and organizations, on violations of their human rights and fundamental freedoms;

(b) To formulate recommendations and proposals on measures and activities to prevent and remedy violations of the human rights of indigenous people;

(c) To work closely with other special rapporteurs, special representatives, working groups and other independent experts reporting to the human rights bodies.

20. In December 2005 the General Assembly adopted in its resolution 59/174, the Programme of Action for the Second International Decade of the World's Indigenous People (2005-2015), with the following objectives:

(a) Promote non-discrimination and inclusion of indigenous peoples in international, regional and national processes;

(b) Promote full and effective participation of indigenous peoples in decisions affecting them;

(c) Redefine development from a vision of equity and in a culturally appropriate way — development with identity;

(d) Adopt targeted policies, programmes, projects, budgets for indigenous peoples' development;

(e) Develop strong monitoring mechanisms and accountability at the international, regional and national levels in relation to existing legal, policy and operational frameworks protecting indigenous peoples.

The theme of the Second Decade is "Partnership for action and dignity".

21. The unsatisfactory responses of many Governments to the pervasive violations of indigenous peoples' human rights has compelled indigenous peoples to bring their issues to international forums. Their active engagement in the various processes has brought forth gains insofar as more instruments and mechanisms address their issues. International human rights law now includes indigenous peoples' rights. That body of law, which can protect the individual and collective rights of indigenous peoples, can be seen in the following:

- The jurisprudence of the human rights treaty bodies
- The recognition and codification of indigenous peoples' rights in international instruments such as the United Nation Declaration on the Rights of Indigenous Peoples (as adopted by the Human Rights Council) and the draft Declaration on the Rights of Indigenous Peoples being discussed at the Organization of American States
- The incorporation of indigenous peoples' rights into conservation and environmental and development-related instruments and policies
- The policies on indigenous peoples of multilateral financial institutions (World Bank, ADB, IADB), UNDP, multilateral bodies (European Commission) and bilateral donors (Denmark, Spain, Germany, United Kingdom, Norway)
- The incorporation of those rights into domestic law, constitutions and practice; and through domestic judicial decisions.

22. This overview shows that for the most part indigenous peoples' movements emerged in response to experiences of grave violations of their basic human rights and fundamental freedoms. Their main demands are for non-discrimination, equality and self-determination and the right to subsistence, which are the basic principles upon which international human rights law is based. It is no surprise, then, that their

engagement with the United Nations began with the Commission on Human Rights and its subsidiary bodies.

23. Indigenous peoples' engagement with the Commission, in particular the formulation of and negotiations on the Declaration on the Rights of Indigenous Peoples, has substantially enriched the discourse on human rights. The contributions of indigenous peoples in elaborating further the discourse on self-determination, collective rights, rights to lands, territories and resources, rights to culture, knowledge and identity cannot be underestimated. Even when they expanded their engagement beyond the Commission, their goal was to make those bodies and processes recognize the links between the respect and protection of indigenous peoples' rights and with environment, development, humanitarian and peacekeeping efforts. It can be said that the human rights-based approach to development, environment, humanitarian and peace work has always been the path taken by indigenous peoples' movements.

24. Indigenous peoples recognized that their efforts to influence the various United Nations bodies and programmes in different fields required a body where they could be discussed and analysed in a more comprehensive manner and where gains could be used to reinforce the work in the various arenas. This body would be the mechanism that would link together all the actors dealing with indigenous peoples' issues for better coordination and complementation. Indigenous representatives who conceptualized the establishment of a United Nations Permanent Forum on Indigenous Issues were clear that that is the main rationale for its establishment. Less than 10 years after the recommendation for its establishment was passed at the Vienna Conference[5] it is now a reality. The struggle of indigenous peoples for human rights and for self-determined development has been successfully brought to a higher body within the United Nations.

25. The evolution of the international human rights system in more than five decades has led to a more comprehensive approach beyond just "naming and shaming" Governments. Human rights monitoring, which is the main task of the treaty bodies, is now covered by more mechanisms. Special procedures are established and special rapporteurs are appointed and mandated to monitor situations of human rights violations. The United Nations, together with human rights non-governmental organizations, women's organizations, indigenous peoples' organizations, and workers' labour unions, among others, has programmes and projects which support human rights institution-building, human rights information, education and training. In recent years, many training workshops have been organized by indigenous peoples' organizations and institutions in coordination with other human rights non-governmental organizations for indigenous peoples to understand how to better use the United Nations human rights system towards better compliance and accountability from the human rights duty bearers.

26. In the late 1990s the United Nations system started to integrate human rights in development work and humanitarian and peace operations. The various United Nations bodies, agencies and programmes reached a "Common Understanding of a Human Rights-Based Approach to Development" at a meeting which took place in 2003. It integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. Indigenous

[5] Vienna Declaration and Programme of Action (A/CONF/157/24).

peoples have repeatedly stated in various forums that this is the approach which approximates their perspective of how development should take place in their midst.

III. Human rights mandate of the Permanent Forum

27. The United Nations has developed various bodies, instruments, mechanisms, tools and methods to implement its human rights mandate under the Charter. The bodies and mechanisms include the Human Rights Council, which replaced the Commission on Human Rights as of 2006, expert bodies and their various Working Groups, the treaty bodies, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the special procedures and United Nations field operations.[6] They are engaged in:

(a) Human rights standard-setting;

(b) Human rights monitoring;

(c) Preparing studies and reports of comparative law and practice on new or emerging human rights issues that require special attention, clarification, research and the development of international human rights policies, guidelines or standards;

(d) Providing technical assistance and cooperation for the development or enhancement of national laws, institutions and capacities that will promote and protect human rights;

(e) Providing an open public forum for an international discussion of human rights themes or specific country situations and giving international visibility to such situations;

(f) Adopting resolutions/decisions on human rights, expressing the views and concerns of the international community, raising awareness and taking action on a number of human rights subjects or country situations.

28. The Forum must implement its human rights mandate without duplicating the work of other human rights bodies and mechanisms. However, as will be seen in the next section, overlaps in implementation are inevitable. But since the situation of human rights of indigenous peoples is still in a dismal state, the more initiatives there are to address that, the better it will be for indigenous peoples.

29. The Forum's advantage is that it enjoys the participation of representatives of several hundred indigenous peoples' organizations, more than 70 States Members of the United Nations, more than 35 United Nations bodies, programmes and funds and other multilateral bodies, and representatives of NGOs, academia and the private sector. The Forum has 16 members composed of equal numbers of indigenous and government experts. Furthermore, there is an Inter-Agency Support Group on Indigenous Issues which is composed of 30 United Nations bodies, programmes, agencies and funds as well as such intergovernmental bodies as the European Commission, the Fondo Indigena, the Inter-American Development Bank, and others. The Group is actively engaged with the work of the Permanent Forum. The Group facilitates the mandate of the Forum to provide advice and help to coordinate the work of these entities.

[6] The future of the expert bodies and special procedures is still under discussion in the Human Rights Council.

30. Another advantage of the Forum is that it is able to bring high-level officials of the United Nations system to participate in some or all of its sessions. The Secretary-General, the President of the General Assembly and the High Commissioner for Human Rights have spoken before the Forum. Besides the Special Rapporteur on the human rights of indigenous people, there are other special rapporteurs and chairs of human rights bodies who participated and made presentations at the Forum sessions. They include the Special Rapporteur on Violence against Women, the Chair of the Committee on the Rights of the Child, the Chair of the Working Group on Indigenous Populations and the Chair of the Commission on the Status of Women. Regional human rights bodies also participated in the 2006 session, namely the Chair of the Working Group to Prepare the Draft Declaration on the Rights of Indigenous Peoples of the Organization of American States and the Chair of the Working Group of Experts on Indigenous Populations/Communities in Africa of the African Commission on Human and Peoples' Rights. The Forum also hosts at its sessions the representatives of grassroots-based indigenous peoples organizations and networks as well as national and regional networks.

31. The Under-Secretary-General for Economic and Social Affairs, who is the Coordinator of the Second Decade of the World's Indigenous People, makes it a point to address the opening or closing meeting of the Forum. The Vice-President of the World Bank presented a report during the 2005 session and the Assistant President of the International Fund for Agricultural Development and the Chair of the United Nations Forum on Forests presented their reports at the 2006 session. As far as Member States are concerned, several Ambassadors of the Permanent Missions in New York come to present their interventions. The Foreign Minister of Ecuador, who became a member of the Forum after leaving that office, spoke at the 2003 session and the Foreign Minister of Bolivia spoke at the 2006 session.

32. The participation of high-level officials of the United Nations and Governments at the Forum's sessions provides encouragement to indigenous peoples and to the staff of United Nations agencies who work on indigenous issues. It also allows the establishment of relationships between indigenous peoples and decision makers, which is a major step in giving meaning to the theme of the Second Decade — "Partnership for Action and Dignity". Opportunities are provided for indigenous peoples to talk with high-level officials from their countries and from United Nations bodies, which is virtually impossible at the country level. Furthermore, indigenous peoples become more aware of the existence of other human rights bodies and mechanisms besides the Working Group on Indigenous Populations and the Permanent Forum.

33. The goal of the Forum as a United Nations body should be to ensure that the economic, social, cultural, civil and political rights of indigenous peoples are respected and promoted. For that to happen, it is necessary to raise the awareness of all relevant actors, i.e., the intergovernmental system, governments and civil society at large, including non-governmental organizations, the private sector and academia of the situation of indigenous peoples. All the actors should then be urged and mobilized to critically analyse their own policies, laws, programmes, projects and budgets in terms of how they are addressing indigenous issues. On the basis of that analysis, they can redesign those instruments in partnership with indigenous peoples. The United Nations Declaration on the Rights of Indigenous Peoples (as adopted by the Human Rights Committee) and the programme of the Second Decade

of the World's Indigenous People are the best frameworks to use to analyse and redesign such policies and programmes.

IV. Review of the implementation of the human rights mandate of the Permanent Forum between 2002 and 2006

34. A large number of statements by indigenous representatives during the Forum sessions is under the human rights agenda item. The Forum hears various allegations of atrocities and human rights violations against indigenous peoples in many countries. In serious cases some countries have been identified in the reports of the Forum.

35. Allegations of gross violations of the human rights of indigenous peoples in one country due to the conflict in the area were presented at the 2003 session. This was brought to the attention of the President of the Security Council in a meeting with him and the Bureau of the Forum. He was urged to bring the matter before the Security Council for immediate action. As the Forum sessions are held in New York it is possible to arrange such meetings.

36. Another case raised at the 2005 session was that of displaced nomadic indigenous peoples. The Forum decided that the Chair should hold a confidential dialogue with the representatives of the country concerned to convey deep concern, to hear their side and to ask for appropriate action. In such situations, the Forum is obliged to engage the Government in question and to inquire about the steps being taken to remedy the situation. It can also provide an audience to the alleged victims of human rights violations.

37. The Forum has supported the work of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. At every session since 2002, he has come to present a summary of his latest reports under the human rights agenda item. At least one public session is devoted to this along with a dialogue with the participants. Indigenous representatives from regional caucuses and organizations present concise statements on human rights issues to him.

38. With the adoption of the themes "Indigenous children and youth" (2003) and "Indigenous women" (2004), indigenous representatives came to the Forum sessions prepared to present cases of violations of the rights of indigenous children and women. Those themes were deliberately chosen because the Forum deemed it crucial that the situation of the most vulnerable sectors among indigenous peoples be given prominence. That was an appropriate choice because among the many results, it was agreed that "indigenous women" and "indigenous children and youth" will be cross-cutting issues which will be addressed at all the sessions. Those themes also attracted relevant United Nations agencies and bodies dealing with those issues to come to participate in the Forum sessions, including the Chair of the Committee on the Rights of the Child, UNICEF, the Chair of the Commission on the Status of Women, UNIFEM, UNFPA, WHO and FAO, among others.

39. Indigenous women's networks[7] in the Americas, Africa and Asia held their own regional conferences to prepare for the 2004 session. Even the IASG members

[7] The networks include the Intercontinental Network of Indigenous Women of the Americas, and the Asia Indigenous Women's Network.

focused their reports on the work they do with indigenous women. The Forum recommended that the Committee on the Elimination of Discrimination against Women develop a general comment on indigenous women and ensure that its reports include situations of indigenous women. The secretariat of the Forum, which is a part of the Interagency Network on Women and Gender Equality, led the formation of a Task Force on Indigenous Women under this umbrella. It was established in 2004 and adopted a three-year programme of work. In 2004-2005, the Task Force conducted a general survey of the work of the United Nations system with indigenous women. During the second year, 2005-2006, the Task Force compiled a report on "Indigenous women and the United Nations system: good practices and lessons learned", which highlighted how various United Nations bodies, agencies, programmes and funds are addressing indigenous women's issues.[8]

40. During the sessions of the Commission on the Status of Women, the secretariat of the Forum works closely with representatives of indigenous women in that body. The secretariat has organized orientation meetings between the indigenous women and the various New York-based United Nations agencies working with indigenous women. The meetings were very useful in making indigenous women understand better what United Nations bodies, programmes and funds are doing. They present opportunities for indigenous women to explore jointly with those bodies what remains to be done to address indigenous women's rights and development issues. The 2006 session recommended that the Special Rapporteurs on Violence against Women and Trafficking of Persons be invited to every session of the Forum to submit reports and to listen to discussions of issues relevant to their mandates (see E/2006/43, para. 51).

41. The plight of indigenous children has, likewise, become a key concern of United Nations bodies dealing with children's rights. The adoption of the theme "indigenous children and youth" for the second session in 2003 provided the impetus for UNICEF and the Committee on the Rights of the Child to do various activities on indigenous children. UNICEF worked on a digest on the indigenous child, as well as a number of case studies aimed at understanding development programming to fulfil the rights of indigenous children. During the International Day of the Child on 19 September 2004, the theme "Indigenous child" was adopted by the Committee on the Rights of the Child. One of the recommendations of the Forum was to request the Special Rapporteur in examining the question of the sale of children, child prostitution and child pornography to pay special attention to indigenous children and make recommendations on rights of indigenous children (E/2003/43, para. 17).

42. In July 2005, the UNICEF Regional Office for Latin America and the Caribbean organized jointly with indigenous peoples the Ibero-American Meeting on the Rights of Indigenous Children and Adolescents, which was held on 7 and 8 July 2005 in Madrid. That Office also initiated the formation of a consultative indigenous group which they are linking with the various agencies based in the region. In 2006, UNICEF in the Philippines undertook a participatory action research project on indigenous children who belong to the Kabihug people. Those children are victims of practices of child labour and slave-like working conditions. The case was presented to the Special Rapporteur on Indigenous Peoples in his follow-up visit to the Philippines in February 2007.

[8] For the report, see the website of the secretariat of the Forum: www.un.org/esa/socdev/unpfii.

43. Some members of the Forum actively participated in the various human rights seminars and expert seminars held by the Office of the High Commissioner for Human Rights.[9] Several of the issues raised before the Forum directly relate to human rights concerns and as a consequence the Forum organized international expert group meetings to discuss these issues in more depth. They are:

- International Expert Meeting on data collection and disaggregation, January 2004
- Technical Workshop on Free, Prior and Informed Consent, January 2005
- Expert Group Meeting on the Millennium Development Goals, Indigenous Peoples' Participation and Good Governance, January 2006
- Expert Group Meeting on the Convention on Biological Diversity International Regime on Access and Benefit-sharing and Indigenous Peoples' Rights, January 2007.

44. The Forum is putting a great deal of effort in elaborating further how the human rights-based approach to development can be operationalized for indigenous peoples. That framework is used to analyse and evaluate the implementation of the Millennium Development Goals and other programmes and policies of other United Nations agencies and programmes. The theme "Millennium Development Goals and indigenous peoples" was adopted for the years 2005 and 2006 and opportunities were provided to make indigenous peoples more aware of the Millennium Development Goals and discuss how that relates to them. The sessions noted that the Millennium Development Goals do not necessarily include a human rights perspective. The Forum called for the integration of the human rights of indigenous peoples as an approach in achieving those goals.

45. The Forum has asked for the integration of the human rights-based approach to development in the Millennium Development Goal country reports and other poverty reduction strategies in countries with indigenous peoples. Various desk reviews were prepared by its secretariat and the ILO, which analysed to what extent indigenous peoples' issues are included in the United Nations common country assessment and the United Nations Development Assistance Framework in various countries, as well as in poverty reduction strategy papers and Millennium Development Goal country reports. The common conclusion of those reports is that there is a lack or very inadequate coverage of indigenous peoples in such documents. The Forum urged indigenous organizations to actively assert their right to participate in the formulation of these various country reports and frameworks and to be involved in monitoring. They can then present their reports to the Forum on how they had been involved by the various bodies in charge of producing such documents.[10]

46. The Forum supported a project which allowed indigenous persons to evaluate International Fund for Agricultural Development-supported projects in indigenous territories. Part of this effort was the development of an "Advocacy Framework for Indigenous and Tribal Peoples' Rights", which was discussed and finalized with the

[9] Examples include the expert seminar on permanent sovereignty of indigenous peoples over their resources, which was held in 2005, and the expert seminar on indigenous peoples and treaties and other constructive arrangements, held in 2006.

[10] See E/2006/43, para. 26.

Inter-agency Support Group on Indigenous Issues and with some members of the Forum. Another project is on "Indigenous peoples and indicators of poverty and well-being". This brought together for discussion indigenous and non-indigenous experts from Latin America, Asia and Africa. The development of indicators to measure the progress in achieving the Millennium Development Goals for indigenous peoples and also for the Convention on Biological Diversity is a groundbreaking effort pursued by the Forum with indigenous peoples (especially the Indigenous Peoples' International Forum on Biodiversity Working Group on Indicators) and the United Nations system.

47. At the fifth session, the Forum adopted important recommendations on human rights. Firstly, it called on the newly established Human Rights Council to ensure that indigenous issues remain as a standing item in its agenda. Secondly, it asked the Council to maintain and improve mechanisms, mandates, special procedures, expert advice mechanisms and complaint procedures relevant and pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous peoples (para. 79).[11] Thirdly, it urged the Human Rights Council to ensure that the universal periodic reviews it will conduct will examine the situation of indigenous peoples of a country under consideration (para. 80).

48. The Forum has been able to attract the participation of the International Organization for Migration (IOM) to its sessions. In 2004 the Forum called on IOM to look into the issue of migration and indigenous women, in particular cases of trafficking of indigenous women. In response to this, IOM, together with the Forum's secretariat, organized the Expert Workshop on Indigenous Peoples and Migration in April 2006. The results of the workshop were fed into the United Nations High-Level Dialogue on International Migration and Development, held in October 2006. The workshop recommended that indigenous peoples should be made more aware of the existence of international treaties like the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Elimination of Discrimination against Women and be trained on how to use them for their issues on migration. IOM has initiated a process towards the creation of a coordinating mechanism to address the issue of trafficking of indigenous women and girls.

49. The Forum played an important advocacy role for the adoption of the Declaration at its fifth session in May 2006. It expressed its conviction that a declaration on the rights of indigenous peoples will be an instrument of great value through which to advance the rights and aspirations of indigenous peoples. It strongly recommended that the General Assembly at its sixty-first session adopt, without amendment, the draft Declaration on the Rights of Indigenous Peoples as finalized by the Working Group on the Draft Declaration in February 2006. The Forum also stated that that would represent a major achievement for the Second International Decade of the World's Indigenous People.[12] The Forum is explicitly mentioned in article 42 of the Declaration, which states that "[T]he United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration".

[11] The paragraphs indicated in parentheses refer to E/2006/43-E/C.19/2006/11.

[12] See E/2006/43, para. 68.

50. The activities mentioned in this section do not cover the whole breadth of what the Forum has done to implement its human rights mandate. It has not covered the activities under the mandates of education, environment, health and culture. Several of the recommendations under these items are those which call on Governments and United Nations agencies to respect the rights of indigenous peoples to education, such as bilingual and intercultural education for indigenous children, the right to have control over their lands and resources and to have their consent obtained freely before they may be relocated or before projects are brought into their communities, respect of their rights to health and to practice their own cultures and speak their languages.

51. In conclusion, the Forum has monitored the situation of human rights of indigenous peoples, elaborated on the human rights-based approach to development, and integrated human rights across its overall work, on economic and social development, environment, health, education and culture, and when it deals with its annual special themes. Human rights underpins most of the recommendations which emerged from the special themes on indigenous children and youth, indigenous women, indigenous peoples and the Millennium Development Goals and issues on migration and housing. The Forum has adopted a holistic, multidisciplinary and multifaceted approach to the promotion and protection of the human rights of indigenous peoples. The universality, inalienability and indivisibility of human rights is very well demonstrated in the way the Forum has implemented its mandate.

V. Work of the Permanent Forum on human rights: challenges and prospects

52. With the ongoing United Nations reform, which includes the establishment of the Human Rights Council and related changes, the Forum is now called upon to play a special and creative role in the field of human rights. The Forum has called on the Council to maintain and strengthen mechanisms which will address indigenous peoples' human rights and also to make indigenous issues a standing agenda item. The mandate of the Special Rapporteur on the human rights and fundamental freedoms of indigenous people is well recognized and established and this will presumably lead to the continuation of this procedure in the Council.

53. Thirty-five years have been spent by indigenous peoples to have the United Nations give more prominence to indigenous peoples' rights in the international human rights agenda. Within this period the indigenous peoples' movement has increased its visibility and strengthened transnational partnerships and solidarity on the basis of human rights, development, peace and humanitarian work. There is no turning back and any adverse efforts to diminish what has been achieved in the potential of the work of the United Nations on indigenous peoples' rights are doomed to fail.

54. The main challenges faced by the Forum in implementing its human rights mandate are the following:

- Continuing egregious violations of the basic rights and fundamental freedoms of indigenous peoples
- Wide gap between policy and implementation of the rights of indigenous peoples

- Coordination gaps between the Permanent Forum and the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights and also between the Forum and other treaty bodies, United Nations agencies and programmes
- Deferral of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly
- High expectations from indigenous peoples on what the Forum can do to address the issues they raise at the sessions.

55. In addition to the practice it has already established, the Forum still has a large part of its human rights mandate to explore in future years, in ways that will add value to the work of the Human Rights Council, the human rights treaty bodies and the High Commissioner for Human Rights.

56. While the Indigenous Peoples' Unit in the Office of the United Nations High Commissioner for Human Rights sits as a member of the Inter-agency Support Group on Indigenous Issues, there is still much room for improvement towards better coordination. Representatives of the Human Rights Council, the Forum, the Office of the United Nations High Commissioner for Human Rights and the Permanent Forum secretariat can hold meetings to discuss further the areas of work that need to be coordinated and the steps that need to be taken to improve coordination. Some issues which can be tackled include:

- The present state of the ongoing restructuring in the Human Rights Council and the mechanisms for indigenous peoples to participate more fully and effectively
- Possible joint expert group meetings or seminars on issues related to human rights
- Technical assistance and cooperation with Governments and indigenous organizations
- Interface between the Human Rights Council and the Permanent Forum
- Monitoring the implementation of the Declaration on the Rights of Indigenous Peoples once it is finally adopted, and enhancing the monitoring of the Second Decade of the World's Indigenous People Programme of Action.

57. The implementation gap which emerges in various meetings has to be addressed more systematically. The Special Rapporteur has held relevant consultations with indigenous peoples' organizations and human rights NGOs and a report on the results is expected. It is important to study that report to see what the Permanent Forum can contribute in furthering the recommendations. This can also be a subject of further dialogues between indigenous peoples, Governments and the United Nations system during the sessions of the Forum or in expert seminars. Technical assistance for Governments to address this gap might also be facilitated if Governments request it.

58. The Forum's practice of inviting the Special Rapporteurs, the chairs of some treaty bodies, regional human rights intergovernmental bodies and political bodies should be extended to other rapporteurs and treaty body chairs or members. This can include the Chair or members of the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Committee on Economic, Social

and Cultural Rights and the Committee on the Elimination of Discrimination against Women. Prioritizing can be done based on the themes of the Forum sessions. The officials can be invited to present some ideas on what joint approaches or steps can be taken to improve the compliance of States with their human rights obligations and to ensure that their decisions, related to indigenous peoples' issues brought before them, are better implemented at the country level. The role of various United Nations agencies and programmes in support of such concrete steps can also be discussed.

59. Based on its experience, the Forum can carry the human rights message to the Governments in a variety of approaches. When the Forum receives an appeal for a specific case of a gross human rights violation, the Forum's Bureau could analyse the situation, in consultation with the Special Rapporteur on the human rights and fundamental freedoms of indigenous people, and, if it deems it appropriate, consider extending its good offices vis-à-vis a government appealing for correction of the situation. Other ways could include a mission to the country at the invitation of a government to ascertain the validity of the information received and to dialogue with the indigenous peoples concerned and with the relevant government bodies and officials. The authority of the Forum as the highest United Nations body in the area of indigenous issues would be well served by such approaches.

60. Once the Declaration is finally adopted, the Forum can invite States in a periodic dialogue to discuss its implementation. Such dialogues could also help identify areas where the assistance of United Nations agencies may be useful, to build national capacities in various areas that would help in the promotion and respect of indigenous peoples human rights. The work of the Committee on the Rights of the Child under the Convention on the Rights of the Child is one way of seeing the work of the Forum in this regard. This same approach can be used with the Programme of Action of the Second Decade of the World's Indigenous People. Governments are expected to submit written reports on how they are implementing this programme. Aspects of the programme which are directly linked to human rights can be monitored and reports thereon can be requested.

61. The Forum could also build much more systematically on its cooperation with the United Nations system to monitor the implementation of the human rights-based approach to development by the various agencies and to help operationalize this approach. One way this could be pursued is a periodic in-depth dialogue with individual United Nations agencies based on reports and well-prepared research that will include the inputs of indigenous communities, where agencies deploy their programmes. Such dialogues would contribute to awareness-raising and capacity-building within the agencies, as well as help in the building of partnerships with indigenous peoples and the donor community as well. The recommendation to improve the coordination between the Permanent Forum and the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights can also be made with other United Nations agencies and bodies. Closer cooperation and coordination among various United Nations bodies, exchange of expertise and a multidisciplinary approach, especially in the human rights field, are clearly in the spirit of the United Nations reform in the last few years and the Forum has an important contribution to make in this direction, given its broad mandate.

62. The other area which has not yet been dealt with by the Permanent Forum is indigenous peoples' human rights and the private sector. The Office of the United

Nations High Commissioner for Human Rights organized a Workshop, "Indigenous Peoples, Private Sector National Resource, Energy and Mining Companies and Human Rights", in December 2001, which called on the Office of the United Nations High Commissioner for Human Rights to organize, in cooperation with indigenous peoples, the Working Group on Indigenous Populations and other relevant United Nations organs and organizations, the private sector and Governments, and possibly investment and social auditing representatives with experience of measuring and monitoring company practices, a second workshop to elaborate a draft framework for dialogue and implementation on consultation, benefit sharing and dispute resolution in private sector projects affecting indigenous peoples. This has not yet materialized. Inasmuch as it is an issue constantly raised by indigenous peoples, the Permanent Forum can explore the possibility of organizing a joint activity with the Office of the United Nations High Commissioner for Human Rights and the Special Representative of the Secretary-General on human rights, transnational corporations and other business enterprises to address these issues.

63. Given the unique composition of the Permanent Forum and the principle of consensus under which it operates, international standard-setting could also be explored by the Forum. Other bodies, besides the Commission on Human Rights, such as the Commission on the Status of Women, the Commission on Social Development, ad hoc committees of the General Assembly and others, have at times contributed significantly to standard-setting efforts at the United Nations. In order to equip itself for such standard-setting work, the Forum will need to further develop its research capacity. The Forum has already launched research work by mandating various members to prepare papers on challenging subjects, including one mandated at the fifth session on the extent to which customary laws should be reflected in international and national standards addressing traditional knowledge.[13] Standard-setting work could be pursued by the Forum, if mandated by the Economic and Social Council, and also in cooperation with the Human Rights Council.

64. In relation to the adoption of the Declaration on the Rights of Indigenous Peoples, the Permanent Forum can sponsor more dialogues between indigenous peoples and Governments to further discuss areas of concern. These can be informal dialogue sessions with the intent of bridging the gap between the positions of government and indigenous peoples so that the adoption by the General Assembly will take place before September 2007. Such dialogues can be facilitated during the sixth session of the Forum in 2007. The United Nations Declaration on the Rights of Indigenous Peoples, as often reiterated, is an important framework for the Permanent Forum's work. Since it is also identified as a body which will help monitor its implementation, it is incumbent upon the Forum to support all efforts for the adoption of the Declaration.

65. The biggest challenge which needs the full cooperation of indigenous peoples, Governments, United Nations bodies, programmes and funds, other multilateral organizations and NGOs is how to ensure that the individual and collective human rights of indigenous peoples are enjoyed by them in their daily lives, in their own communities. The success of the Forum will be measured by how it can help accomplish this.

[13] E/2006/43, para. 172.

66. The participation of high-level representatives of most of the United Nations bodies, programmes and funds as well as other multilateral bodies, the Governments and of the most important networks and organizations of indigenous peoples all over the world is what makes the Forum creative and dynamic in the way it deals with the various issues brought to its attention. The wealth of information and experiences which are brought to the Permanent Forum should be analysed and effectively used to address the difficult human rights challenges indigenous peoples face on a day-to-day basis. The convening capacity of the Forum to bring all relevant actors is crucial in the search for justice, human rights and self-determined development for indigenous peoples all over the world.